Filed 12/22/20 In re M.W. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re M.W. et al., Persons Coming Under the Juvenile Court Law.	
KINGS COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. R.S., Defendant and Appellant.	F081280 (Super. Ct. Nos. 18JD0252, 18JD0253) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Kings County. Jennifer Lee Giuliani, Judge.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Lee Burdick, County Counsel, and Risé A. Donlon, Deputy County Counsel, for Plaintiff and Respondent.

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[*] Before Detjen, Acting P.J., Smith, J. and De Santos, J.

In this juvenile dependency case, R.S. (mother) appeals the juvenile court's order terminating her parental rights as to her two minor children (Welf. & Inst. Code,[1] § 366.26). Mother contends the order must be reversed because (1) the court erred by failing to apply the beneficial parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)), and (2) the court erred by finding the Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901 et seq.) did not apply because inadequate inquiry was made of the alleged father as to whether the children may be Indian children. We conditionally reverse and remand for the juvenile court to fulfill its duty of initial inquiry under ICWA.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2018, mother left seven-year-old M.W. and three-year old Michael W. unattended in a motel without supervision, while she engaged in mail theft. A methamphetamine pipe was found in the motel room, located in a place that was accessible to the children. Mother was arrested and booked into Kings County jail, leaving her children without any provision for support. The Kings County Human Services Agency (agency) was alerted and responded.

Mother reported to the investigating social worker she had been smoking methamphetamine for the last 12 years about twice a week, with her last use being two days prior. Mother said she had only become sober while incarcerated. The children were placed into foster care.

The agency filed a petition on behalf of the children, alleging they came within the jurisdiction of the juvenile court under section 300, subdivisions (b)(1) (failure to protect) and (g) (no provision for support).

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[1] All further undesignated statutory references are to the Welfare and Institutions Code.

At the detention hearing held on December 14, 2018, the court ordered the children were to continue to be detained from mother's physical custody. Michael W., Sr. (father), who was incarcerated in prison and not present, was found by the court to be the children's alleged father. Both mother and father were appointed counsel. Mother indicated she had no Indian ancestry, and the court found ICWA did not apply.

In January 2019, the agency mailed a letter to father enclosing social study interviews, parentage forms, and a "PARENTAL NOTIFICATION OF INDIAN STATUS" form (ICWA-020 form). Father did not return any of the requested paperwork.

An addendum report filed in January 2019 indicated the agency had received a "PARENTAGE INQUIRY" form from Kings County Child Support, which stated father had been identified as the father of the children. The form indicated that father's parentage was established by voluntary declaration in December 2015.

At the jurisdictional hearing held on January 31, 2019, father made his first appearance via Court Call. Mother waived her right to a jurisdictional hearing, and court found the children came within its jurisdiction under section 300, subdivisions (b) and (g).

At the disposition hearing held on February 21, 2019, all parties submitted on the reports. The court removed the children from mother's physical custody. The court noted father was not requesting custody of the children but nonetheless found placement of the children with him would be detrimental to the children because he was incarcerated. The court ordered mother be provided with reunification services and that father be bypassed due to his incarceration.[2] Mother was ordered to participate in general counseling, parenting education, a substance abuse assessment, and substance abuse testing.

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[2] It was reported father was not eligible for parole until April 2023.

The six-month status review report indicated mother remained incarcerated in county jail and did not have a scheduled release date. She had not completed services because she did not have access to them inside the jail. Mother had attended some Narcotics Anonymous and Alcoholics Anonymous classes in jail at the beginning of the review period. She had been instructed to drug test but refused and was written up for refusing. Mother reported to the social worker she refused to drug test because she did not want it to negatively affect the dependency case.

During the six-month review period, the children reported they would like to live with mother but they understood she was in jail. The children reported feeling safe and comfortable in their care provider's home.

Mother visited the children once a week for one hour through video chat from jail and attended every visit. Mother was reported as being "always attentive and appropriate" during visits. It was reported that mother attempted to engage with Michael throughout visits despite his young age and inability to focus on the visit for the entire hour. Mother talked with M.W. for the majority of visits. Mother's grandmother had passed away, and during one visit, she appropriately spoke about death and difficult circumstances with the children. It was reported the children looked forward to visiting with mother every week.

At the six-month review hearing, the court continued mother's services and set a 12-month review hearing.

The agency's 12-month status report indicated on December 3, 2019, mother pled no contest to a violation of Penal Code section 273A, child cruelty resulting in possible injury or death. It was anticipated mother would be sentenced to four years in prison. During the review period, mother completed a 12-week anger management course and a 14-week parenting class. She also attended Narcotics Anonymous twice per month. She had not engaged in substance abuse services because they were not available until recently.

Mother expressed interest in continuing services after being released from prison in order to maintain contact with the children.

The children expressed to the social worker during the review period they liked living with their care provider because they felt safe and enjoyed living with the other children in the home. M.W. expressed she would like to live with mother when she is released from prison but understands mother needs to work on herself before it is safe for her to be with mother. Michael reported that he missed mother but liked where he was living.

Mother continued to attend every visit, and the visits continued to go well. It was reported the children and mother choreographed and practiced dances together. Mother was observed giving the children words of encouragement when they were feeling sad or upset. No concerns were noted.

At the 12-month status review hearing, the agency recommended mother's services be terminated and a section 366.26 hearing be set in light of mother's anticipated four-year prison sentence. All parties submitted on the reports. The court followed the agency's recommendation.

The agency's section 366.26 report indicated mother and the children's visits while mother was in county jail went well. It was reported that mother was observed to be interested in the children, talked to them about their daily lives, sang with them, played with them by pretending to make food, gave them advice and encouragement, and told them she loved them. There were no significant concerns noted during visits.

When mother was transferred to state prison, she and the children had one in-person supervised visit, and mother was observed to be appropriate with the children. It was reported that M.W. told mother if she had a house, she would want to live with mother, Michael, and their current care provider. On March 24, 2020, the social worker contacted the prison and learned that in-person visits at the prison were suspended until

further notice due to COVID-19. The social worker sent letters to mother in February and March, and mother wrote the children a letter in April.

The report indicated the children had raised no significant medical, mental health or developmental concerns. They had formed a "healthy, nurturing, parent/child relationship" with their care provider, with whom they had been placed for 16 months. The children responded to the care provider's directions and went to her when they needed something, were not feeling well, or were having a nightmare. The care provider was willing to adopt the children.

M.W. reported if she could live with anyone, it would be her aunt, mother, and her care provider. M.W. reported she would feel sad if she could never live with mother again. She also reported feeling safe in the care of her care provider and wanted to do more things with her. Michael was too young to understand the concept of adoption in order to make a statement about his wishes, but he said he liked living in his care provider's home. He said that if he could live with anyone, it would be his care provider. When asked how he would feel if he could not live with mother, he responded, "happy." The social worker reported Michael "has bonded to his care provider, and seeks her love, attention, and comfort." The care provider had expressed a willingness to maintain informal contact with the children's birth parents, siblings, and extended family members.

The agency recommended the children be found adoptable and that the court terminate parental rights.

Mother requested a contested hearing. At the hearing on June 10, 2020, mother testified she did not agree with the recommendation of adoption. She testified that she felt she had a "very strong bond" with the children, and with M.W. in particular. During the video visits when she was in jail, mother and the children would talk about school days and what the children were doing at school and home. M.W. would sing and dance, and they would play games. Mother would help M.W. with math. After in-person

visitation was suspended, mother had been keeping in contact with them through mail. She has written several cards and letters but has not received anything back.

When father's counsel asked mother why she believed she had a strong bond with her children, she responded, "[b]ecause they are my children." Mother went on to explain that she had been an active parent and had not been apart from them other than when she had been incarcerated. Mother said that severing her relationship with the children would negatively affect their mental state. Mother compared the situation to her childhood and said it was difficult for her to be separated from her mother and she acted out as a result. Mother testified she wanted to be in her children's lives and be a good mother to them so "they won't grow up the way I'm growing up now."

When the court asked if mother had any more evidence to present, mother's counsel said mother wanted him to call M.W., but after interviewing M.W., he decided against it.

Counsel for the agency and for the children argued the children were adoptable and mother had not shown that any exceptions to terminating parental rights applied. Mother's counsel agreed the children were adoptable but argued that mother had shown the beneficial parent-child relationship exception to termination of parental rights applied.

The court found by clear and convincing evidence the children were adoptable. The court noted it "[did not] disagree that it is likely in reality that both of these children have a bond with their mother." The court went on to say that the evidence was not sufficient to establish the beneficial parent-child relationship exception to termination of parental rights applied. The court noted the Legislature and case law are clear that the children should not have to wait for their parents to be ready to have them in their care. The court found mother had not met her burden of showing the children would suffer detriment if the parent-child bond were to be severed. The court ordered adoption as the permanent plan for the children and ordered all parental rights terminated. The court also

made a finding that adequate ICWA inquiry had been completed and that ICWA did not apply.

DISCUSSION

I. Beneficial Parent-Child Relationship Exception to Termination of Parental Rights

At a section 366.26 hearing, when the juvenile court finds by clear and convincing evidence the child is adoptable, it is generally required to terminate parental rights and order the child be placed for adoption unless a statutory exception applies. (§ 366.26, subd. (c)(1).) One of the statutory exceptions is the beneficial parent-child relationship exception, which applies when "[t]he court finds a compelling reason for determining that termination would be detrimental to the child" where "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) It is the parent's burden to show an exception applies. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573–574.)

Mother contends the juvenile court erred by concluding the beneficial parent-child relationship exception to the termination of parental rights did not apply. We disagree.

" '[B]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an *extraordinary case* that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement.' " (*In re K.P.* (2012) 203 Cal.App.4th 614, 621, italics added.)

To show the beneficial parent-child relationship exception applies, the parent must prove "his or her relationship with the child 'promotes the well-being of the child to such a degree as to *outweigh* the well-being the child would gain in a permanent home with new, adoptive parents.' " (*In re K.P., supra,* 203 Cal.App.4th at p. 621, italics added.) It is not enough to show the child would derive "some benefit" from continuing a relationship, and " ' "frequent and loving contact" is not sufficient to establish the existence of a beneficial parental relationship.' " (*In re Marcelo B.* (2012) 209

Cal.App.4th 635, 643.) Rather the parent must show severing the relationship would deprive the child of a substantial, positive emotional attachment such that the child would be "*greatly* harmed." (*Ibid*.)

With regard to the court's conclusion a parent did not meet his or her burden of proof with regard to any factual findings, we look to "whether the evidence compels a finding in favor of the parent on this issue as a matter of law." (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 647.) The question is "whether the … evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' " (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528, disapproved on other grounds by *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1010, fn. 7.) We review the court's conclusion that the benefit the children would receive from continuing the relationship with mother was outweighed by the benefit they would receive by being adopted for abuse of discretion, and any factual findings that underlie it for substantial evidence. (See *In re Breanna S., supra*, 8 Cal.App.5th at p. 647.) " ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." ' " (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319).[3]

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3 Appellate courts have adopted differing standards of review for the beneficial parent-child relationship exception: substantial evidence (see, e.g., *In re G.B.* (2014) 227 Cal.App.4th 1147, 1165); abuse of discretion (see, e.g., *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449); and, more recently, a "hybrid" standard, which reviews the juvenile court's factual findings (e.g., whether the parents regularly and consistently visited and whether a beneficial parent-child relationship existed) for substantial evidence, and a juvenile court's conclusion that the benefit to the child derived from preserving parental rights is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption for abuse of discretion (see, e.g., *In re Breanna S., supra*, 8 Cal.App.5th at p. 647).

The issue is currently pending before the California Supreme Court in *In re Caden C.* (2019) 34 Cal.App.5th 87, review granted July 24, 2019, S255839. We note there is not much practical difference between the different standards of review. Under any of these standards of review, the practical differences between them are slight because they

We find no error. In her brief, mother recites all facts favorable to her but does not explain the basis of her argument the court was compelled by the evidence to make any required factual findings or that it abused its discretion. Mother discusses at length general authorities discussing constitutional protections and importance of the parent-child relationship but does not point to any evidence that was presented in the present case that the children would suffer great harm if their relationship with mother were to be severed. Michael was particularly bonded to the care provider, and due to his young age, had had "limited contact" with mother. He had expressed to the social worker he would be "happy" if he could not live with mother. There was more evidence of a bond between M.W. and mother, and M.W. was consistent with her desire to live with mother and her expression she would be sad if she were never to see her again. The social worker acknowledged this but nonetheless opined "the negative impact [to M.W.] does not outweigh [her] need for safety, stability, and permanency." The social worker also noted M.W. had a bond with Michael. By all accounts both children were doing well, with no mental health or developmental concerns, despite only seeing mother once a week through video chat. Once visits were suspended altogether due to COVID-19, there was no evidence presented that the children displayed any problematic behavior or had a difficult time adjusting to not having any contact with mother.

The primary cases mother relies on, *In re E.T.* (2018) 31 Cal.App.5th 68 (*E.T.*) and *In re Scott B.* (2010) 188 Cal.App.4th 452 (*Scott B.*), do not help mother and instead highlight the type of evidence mother would have had to present to successfully show the beneficial parent-child relationship exception applied.

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all give broad deference to the juvenile court's judgment. (See *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) We should interfere only if under all the evidence viewed most favorably in support of the juvenile court's action, it finds no judge could reasonably have made the order. (*Ibid.*) We note we find no error under any of them.

In *E.T.*, the appellate court reversed the juvenile court's order declining to apply the relationship exception. There, when the children were separated from their mother, they demonstrated anxiety, uncertainty, and fear. (*E.T., supra,* 31 Cal.App.5th at p. 72.) During visits, the children at times expressed a wish to visit longer with her or visit her home. (*Ibid*.) The social worker testified the mother provided the children with comfort and affection and addressed their fears and anxiety and that both the mother and the foster parents provide consistency in the children's lives. (*Ibid*.) The child welfare worker testified that following visits the children were sad and withdrawn and sometimes would act out, but that some of the behavior may have been due to separation from the mother. (*Id*. at p. 73.) The juvenile court found the children were " 'very tied to their mother.' " (*Id*. at p. 75.)

In *Scott B.,* the child was nine years old when he was placed in foster care and 11 years old when his mother's parental rights were terminated. He had lived with his mother his whole life prior to removal. (*Scott B., supra*, 188 Cal.App.4th at p. 471.) The child suffered from attention deficit hyperactivity disorder and autism, needed special education services, had behavior problems at school, had problems interacting with his peers, and had bladder control issues. (*Id*. at pp. 455–456.) When the child learned he might be adopted, his behavior regressed to growling and biting. (*Id*. at p. 458.) He was adamant at the section 366.26 hearing that he did not wish to be adopted. (*Id*. at p. 464.) The child stated that if his foster parent adopted him, he would run away because he wanted to live with his mother. (*Id*. at p. 466.) There, the child's court appointed special advocate repeatedly stated in her reports that the mother and the child have a very close relationship and it would be detrimental to the child for the relationship to be disrupted. The child had emotional instability and repeatedly insisted that his preference would be to live with the mother. (*Id*. at p. 471.) The appellate court held these reasons were compelling to find that termination of parental rights was detrimental to the child and reversed the juvenile court's order terminating parental rights. (*Ibid*.)

Unlike the facts in *E.T.* and *Scott B.*, mother presented no evidence to show what detriment the children would suffer if the parent-child relationship were terminated. As discussed, the children did not show any serious behavioral issues connected to being away from mother, even when they had no contact with her. The children did not have special needs, for which they derived particularized comfort from mother. Though there was evidence mother did offer comfort to the children, the children also were able to be soothed and comforted by the care provider. The court did not abuse its discretion by finding the children would not suffer detriment that outweighed the benefit of adoption.

Mother suggests that because she was unable to complete reunification services due to her incarceration, the court erred by ordering adoption as the children's permanent plan, arguing that "go to prison, lose your child" is not an appropriate legal maxim. To support her argument, mother cites *In re Brittany S.* (1993) 17 Cal.App.4th 1399, which she contends stands for the proposition that "[a]n incarcerated parent should not be destined to lose their parental rights." Mother also cites *In re Monica C.* (1995) 31 Cal.App.4th 296 to support a similar proposition. Mother's reliance on *In re Brittany S.* and *In re Monica C.* is misplaced.

In both *In re Brittany S.* and *In re Monica C.*, each appellant raised the issue of the reasonableness of the services offered to the parent while she was incarcerated in an appeal from an order terminating her parental rights; the respective appellate courts reversed the orders concluding services offered were not reasonable. (*In re Brittany S. supra,* 17 Cal.App.4th at p. 1404; *In re Monica C., supra,* 31 Cal.App.4th at p. 306.) These cases are simply inapplicable to the present case, as they have since been superseded by the 1994 enactment of section 366.26, subdivision (*l*)(1). Section 366.26, subdivision (*l*)(1) provides:

> "An order [setting a section 366.26 hearing] is not appealable at any time unless all of the following apply: [¶] (A) A petition for extraordinary writ review was filed in a timely manner[;] [¶] (B) The petition substantively

> addressed the specific issues to be challenged and supported that challenge by an adequate record[; and] [¶] (C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits."

"Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section." (§ 366.26, subd. (*l*)(2).)

Accordingly, to the extent mother is attempting by this appeal to challenge the reasonableness of her services as a basis to reverse the order terminating her parental rights, we reject it. Such a challenge is precluded by section 366.26, subdivision (*l*), as mother does not assert she properly filed a petition for extraordinary writ as a result of the court's order setting a section 366.26 hearing nor are we aware of one. In addition, mother never objected to the reasonableness of her services before the juvenile court.

We find no error.

II. ICWA Inquiry

Mother contends the juvenile court's section 366.26 orders must be reversed and the matter remanded because the court's finding ICWA did not apply was not supported by substantial evidence. Specifically, mother contends the agency and the court failed to make an initial inquiry of whether the children were Indian children from father's side of the family. We agree the agency and the court failed to comply with its initial duty of inquiry and that limited remand is necessary.

ICWA reflects a congressional determination to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards that a state court, except in emergencies, must follow before removing an Indian child from his or her family. (25 U.S.C. § 1902; see *In re Isaiah W.* (2016) 1 Cal.5th 1, 7–8.) The Indian child, Indian custodian, and the Indian child's tribe have the right to intervene in any "proceeding for the foster care placement of, or termination of parental rights to, an Indian child" (25 U.S.C. § 1911(c)), and may petition the court to

invalidate any foster care placement of an Indian child made in violation of ICWA (25 U.S.C. § 1914; see § 224, subd. (e)).

For purposes of ICWA, an "Indian child" is an unmarried individual under 18 years of age who is either (1) a member of a federally recognized Indian tribe, or (2) is eligible for membership in a federally recognized tribe and is the biological child of a member of a federally recognized tribe. (25 U.S.C. § 1903(4) & (8); see § 224.1, subd. (a) [adopting federal definitions].)

The agency's initial duty of inquiry to determine whether a child is an Indian child, includes "asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled." (§ 224.2, subd. (b).) The juvenile court must ask the participants in a dependency proceeding upon each party's first appearance "whether the participant knows or has reason to know that the child is an Indian child" (§ 224.2, subd. (c)), and "[o]rder the parent … to complete Parental Notification of Indian Status ([California Judicial Council] form ICWA-020)" (Cal. Rules of Court, rule 5.481(a)(2)(C), italics omitted). The parties are instructed to inform the court "if they subsequently receive information that provides reason to know the child is an Indian child." (25 C.F.R. § 23.107(a) (2020); see § 224.2, subd. (c).)

Here, the agency mailed an ICWA-020 form, which father never returned. On this record, this was the only inquiry into possible Indian ancestry on the children's paternal side. Father appeared at multiple hearings, but the court never asked father any questions regarding whether he had any information as to whether the children were Indian children. The agency had contact with the children's paternal aunt and uncle, and the children attended visits with them throughout the proceedings, but there is no evidence the agency asked them if they had any information with regard to the children's possible Indian ancestry. Because the court did not ask father if he knew, or had reason to know,

the children were Indian children as required by section 224.2, subdivision (c), and there is no evidence the agency asked father or any paternal relatives about whether the children were possibly Indian children, as required by section 224.2, subdivision (b), the court's finding ICWA did not apply was not supported by substantial evidence.

Respondent argues inquiry of father was not required because he was an alleged father who never sought to elevate his status to presumed. Respondent argues, " 'An alleged father may or may not have any biological connection to the child. Until biological paternity is established, an alleged father's claims of Indian heritage do not trigger any ICWA notice requirement because, absent a biological connection, the child cannot claim Indian heritage through the alleged father,' " citing *In re E.G.* (2009) 170 Cal.App.4th 1530, 1533 (*E.G.*).

We are not persuaded by respondent's argument. We first note that section 224.2, subdivision (c) requires the court to ask "each participant present in the hearing" if they know, or have reason to know, whether the children are Indian children. Father was a represented party to this action and may have had information regarding the children's status; this triggered the requirement under section 224.2, subdivision (c).

Further, *E.G.*, the case relied on by respondent, is inapposite. In that case, one of two alleged fathers claimed Indian ancestry, and the court ordered both alleged fathers to participate in paternity testing. (*E.G.*, *supra*, 170 Cal.App.4th at p. 1533.) No ICWA notice was sent to the tribes from which the alleged father claimed he was descended. (*E.G.*, at p. 1533.) The alleged father was excluded as the father of the minor. (*Ibid.*) The appellate court found no ICWA error because ICWA defines an Indian child as one who has a biological tie to a tribe, and the alleged father was excluded as the biological parent. (*E.G.*, at p. 1533.)

In the present case, though father's status was never elevated, the record indicates the reason was not because a biological connection could not be established but simply because father had not requested it. He never claimed, however, not to be the father of

the children; rather, at one point in the proceedings, his attorney expressed to the court that father "wants to be home with his children and would like the status of presumed to continue to proceed." It was only after the court advised of "legal consequences to having a finding of presumed and, then, not reunifying," that father did not make the request again. Mother believed him to be the father of the children, and no other men claimed to be the children's father. Father was present at the children's birth and named on both children's birth certificates. The children had lived with father and his family in the past. Kings County Child Support reported to the agency father's parentage was established by voluntary declaration.

We find the court's comments in *In re Daniel M.* (2003) 110 Cal.App.4th 703, 708–709 instructive:

> "[B]ecause the ICWA does not provide a standard for the acknowledgment or establishment of paternity, courts have resolved the issue under state law. [Citations.] Courts have held an unwed father must take some official action, such as filing a voluntary declaration of paternity, establishing paternity in legal proceedings, or petitioning to have his name placed on the child's birth certificate. [Citations.] Similarly, in California an alleged father may acknowledge or establish paternity by voluntarily signing a declaration of paternity at the time of the child's birth, for filing with the birth certificate (Fam. Code, § 7571, subd. (a)), or through blood testing (Fam. Code, § 7551)."

Here, there was evidence on the record that father had taken "official action" to establish himself as the biological father, including filing a voluntary declaration of paternity and being listed on the birth certificates.

We note "[t]he purpose of ICWA and related California statutes is to provide notice to the tribe sufficient to allow it to determine whether the child is an Indian child, and whether the tribe wishes to intervene in the proceedings." (*In re N.G.* (2018) 27 Cal.App.5th 474, 484.) We also note the California Supreme Court has emphasized it is preferable to err on the side of examining thoroughly whether a minor may be an Indian child. (See *In re Isaiah W., supra,* 1 Cal.5th at p. 15.)

As such, we decline to hold that just because the court had not elevated father's status on the record, we should disregard evidence on the record that father had a biological relationship with the children, was a represented party to the proceedings, and potentially had pertinent information regarding the children's status as Indian children. A limited remand is necessary for the court and agency to adequately inquire into whether the children are Indian children.

DISPOSITION

The juvenile court's order terminating parental rights is conditionally reversed. The matter is remanded to the juvenile court for the sole purpose of complying with its duty of inquiry under ICWA. At the minimum, father and/or any other paternal relatives who can be located, should be asked if they have any reason to know the children are Indian children. (§ 224.2, subd. (b).) If father or a paternal relative gives reason to believe the children are Indian children, further inquiry should be conducted pursuant to section 224.2. If, after adequate inquiry is made, the court determines ICWA does not apply, the order shall be reinstated. If the juvenile court is presented with evidence causing it to determine ICWA applies to this case, the juvenile court is ordered to conduct a new section 366.26 hearing in conformance with all provisions of ICWA.